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When our desire to punish becomes cruel and unusual

By MARY SANCHEZ

The easy reaction would be to shudder at the mess California has gotten itself into with its prison population.

Conditions are so heinous in the state's 33 adult prisons that a district court panel ordered authorities to release or transfer more than 33,000 inmates to alleviate overcrowding. The U.S. Supreme Court has upheld that ruling a 5-4 decision, reasoning that conditions are so overwhelming that they constitute cruel and unusual punishment.

Only able to house 80,000 inmates, California's prison population has at times exceeded 160,000. (It's currently at about 143,000.) Among other unspeakable conditions, the court heard about these: suicidal inmates held in telephone-booth-sized cages without toilets; more than 200 inmates living in a gym with two to three guards; and 50 inmates sharing one toilet. A lower court found that an inmate unnecessarily dies each week due to medical issues not properly addressed.

But let's be honest. While the Golden State has taken dysfunctional correctional policies to a whole new level, none of the underlying causes are unique. No state is free of the mentality that led California to this juncture.

We've all been suckered to a certain extent by the war on drugs, get-tough-on-crime slogans and zero tolerance, sentencing guidelines like three strikes that take out judge's discretion, and incarcerating rather than treating the mentally ill and the addicted.

California increased its jail populations to unconstitutional levels in part by jailing too many people for too long on parole violations and nonviolent drug offenses. Prisons have become a place to slam people for a period of time because society would rather not address their deeper issues. That denotes a bigger failure than what the court was asked to address.

One of the grave injustices of the American criminal justice system is how the nation's prisons have become a place to warehouse the mentally ill in institutions. In fact, a 1990 class action case involving seriously mentally ill inmates was part of the Supreme Court's ruling this month in *Plata v. Brown*.

The high court ruling has elicited the predictable knee-jerk reactions - including from some of the Supreme Court justices themselves. The most loaded contention is the fear that all types of violent criminal as will be let loose on the streets, free to maim and menace the gentle public. Consider the dissent of Justice Antonin Scalia, who argued that the lucky ducks who get sprung from jail will not be limited to aggrieved prisoners with medical conditions or severe mental illnesses who see early release, but rather "many will undoubtedly be fine physical specimens who have developed intimidating muscles pumping iron in the prison gym." You can almost see the outline of a Willie Horton-style attack ad in his opinion.

Gov. Jerry Brown has announced a plan to shift inmates to county jails, although that should only be viewed as a temporary fix. California and the nation need a correctional system overhaul.

We need drug and mental health courts, which can offer diversion from jail for non-violent, non-repeat offenders whose crime is linked to those underlying issues, if they complete treatment programs. We also need prisons geared toward rehabilitation. We also need prisons geared toward rehabilitation for those expected to re-enter society, not the kind of prisons that condemn inmates to cycles of incarceration. These aren't simple, quick or inexpensive changes. Luckily, however, violent crime rates and inmate counts nationally have declined from previous highs. That creates space for thoughtful reform.

These kinds of reform are not inconsistent with a sensible tough-mindedness about protecting society from criminals. Repeat violent offenders - indeed, including many who might have been rehabilitated earlier in life, under the auspices of a more enlightened system - simply need to remain locked up as deemed by the courts. Life with no chance of parole can be a fair sentence.

But just how many of any state's prison population fit that profile? And how many more might have never have become "hardened criminals" had rehabilitation been a viable possibility through adequately funded programs? Yes, prisons are necessary to safeguard the public. They are the proper place for some people to pay a debt to society, and even to - within constitutional parameters - rot in jail.

But prisons are not where we should warehouse those we simply don't want to bother helping.

ABOUT THE WRITER

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